

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of:

Ghana Café, LLC
t/a Ghana Café

License No.: 82751
Order No.: 2011-417

Application for a Substantial Change to a
Retailer's Class CR License
at premises
1336 14th Street, N.W.
Washington, D.C. 20005

BEFORE: Nick Alberti, Interim Chairperson
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member

ALSO PRESENT: Ghana Café, LLC, t/a Ghana Café, Applicant

Charles Reed, Chairperson, Advisory Neighborhood Commission
(ANC) 2F, Protestants

Jeffrey Dzieweczynski, on behalf of A Group of Five or More
Individuals, Protestants

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER DENYING APPLICANT'S MOTION FOR RECONSIDERATION

Ghana Café, LLC, t/a Ghana Café (Applicant), filed an Application for a Substantial Change to a Retailer's Class CR License, located at 1336 14th Street, N.W., Washington, D.C. The Applicant requested a summer garden with 51 seats, which would be located in the rear portion of the establishment. Ghana Café, LLC, t/a Ghana Café, Board Order No. 2011-367, 1-2 (D.C.A.B.C.B. Aug. 17, 2011). ANC 2F, represented by Chairperson Charles Reed, and A Group of Five or More Individuals, represented by Jeffrey Dzieweczynski, (collectively the "Protestants") timely filed protest letters. The Application came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on November 29, 2010, and a Status Hearing on January 1, 2011. On January 12, 2011, the Board dismissed ANC 2F from the protest, but reinstated the ANC on February

2, 2011. The Protest Hearing was held on May 11, 2011. The Board denied the Application in Board Order No. 2011-367, because it conflicted with the establishment's Voluntary Agreement, which was approved by the Board on October 28, 2009.

The Applicant has filed a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 and argues that the Board has misinterpreted the establishment's Voluntary Agreement. The Applicant argues that the Voluntary Agreement is ambiguous and only prohibits the informal gathering of the establishment's patrons in the rear of the establishment. *Applicant's Motion for Reconsideration*, 1-2. The Applicant also argues that ANC 2F has not sought to have the District Department of Transportation (DDOT) remove the bus stop near the establishment in violation of Section 7 of the Voluntary Agreement. *ABRA Licensing File No. 82751, Voluntary Agreement, Section 7*.

ANC 2F filed a reply in opposition to the Motion for Reconsideration. ANC 2F argues that the Voluntary Agreement is clear that the summer garden requested by the Applicant is prohibited. *ANC 2F's Opposition to Applicant's Request for Reconsideration of ABRA No. 2011-367 Denying Applicant's Request for a Substantial Change*, 1-4. ANC 2F also notes that even if the Board grants the Motion, the Board should deny the Motion, because the Application is inappropriate. *Id.* at 4-5.

Finally, ANC 2F also notes that the Applicant did not properly serve the Motion for Reconsideration on the Protestants; however, we do not find that the Applicant's failure to serve the other parties is so egregious that it merits dismissal of the Motion for Reconsideration. *Id.* at 6; 23 DCMR § 1703.8 (2008) ("Failure to serve all parties of record, or their designated representatives, may result in the Board delaying action on the matter at issue until such time as service is properly accomplished."). We also note that we delayed issuing a decision until the ANC had an opportunity to respond to the Applicant's arguments. As such, we will address the Motion for Reconsideration on the merits.

We deny the Applicant's Motion for Reconsideration.

Section 6 of the Voluntary Agreement states that "Applicant shall not allow loitering at the rear of the building, nor permit the rear of building [sic] to be used as a smoking, break area, or gathering place for employees, patrons or others and shall post a notice to such effect." *Voluntary Agreement*, § 6.

In turn, section 7 of the Voluntary Agreement states that:

The parties agree that Applicant may have outside seating in a sidewalk café area in front of its premises, subject to obtaining a public space permit and complying with other regulations concerning such cafes *Id.* at § 7.

On its face, the Voluntary Agreement prohibits the establishment from operating a summer garden in the rear portion of the establishment. Section 6 of the Voluntary Agreement specifically states that the Applicant shall not permit its patrons to gather in the rear portion of the establishment. *Id.* at § 6. Section 7 does not contradict this language.

Instead, section 7 of the Voluntary Agreement only gives the Applicant permission to operate a sidewalk café *in the front* of the establishment. Id. at § 7 (“ . . . Applicant may have outside seating in a sidewalk café area in front of its premises . . .”). Therefore, we affirm our decision in Board Order No. 2011-367.

On a final note, we recognize that the Applicant has argued that ANC 2F has not fulfilled its obligations under § 7 of the Voluntary Agreement. The Applicant states that the Voluntary Agreement mandates that “ANC 2F . . . seek to have DDOT move the existing Bus [sic] stop from in front of the Premises so as to all[ow]¹ [sic] the existence of the sidewalk café.” Id. at § 7. The Applicant then argues that ANC 2F has not fulfilled this obligation.

We do not reach this issue in this Order because Title 25 of the D.C. Official Code does not give the Board the power to order ANC 2F to take any action in respect to the District Department of Transportation. See generally, D.C. Code § 25-201 (2001).

ORDER

Based on the foregoing, the Board, on this 5th day of October 2011, **DENIES** the Motion for Reconsideration filed by Ghana Café, LLC, t/a Ghana Café. Copies of this Order shall be sent to the Applicant, ANC 2F, and Jeffrey Dzieweczynski, on behalf of the Group of Five or More Individuals.

¹ Section 7 of the Voluntary Agreement reads as follows: “ANC 2F will seek to have DDOT move the existing Bus stop from in front of the Premises so as to all the existence of the sidewalk café.” We find that the sentence contains a clerical error and that the parties intended to say “allow,” not “all.”

District of Columbia
Alcoholic Beverage Control Board



Nick Alberti, Interim Chairperson

Donald Brooks, Member

Herman Jones, Member

Calvin Nophlin, Member

Pursuant to 23 DCMR § 1719.1 (2008), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, Reeves Center, 2000 14th Street, NW, 400S, Washington, D.C. 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (2008) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b) (2004).